

HOUSE APPROPRIATIONS AND FINANCE COMMITTEE SUBSTITUTE FOR
HOUSE ENERGY AND NATURAL RESOURCES COMMITTEE SUBSTITUTE FOR
HOUSE BILL 433

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

AN ACT

RELATING TO CONSERVATION; ENACTING THE LAND, WILDLIFE AND CLEAN
ENERGY ACT; CREATING A BOARD; PROVIDING FOR LEGISLATIVE
OVERSIGHT; CREATING A FUND; MAKING AN APPROPRIATION.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the
"Land, Wildlife and Clean Energy Act".

Section 2. PURPOSE.--The purpose of the Land, Wildlife
and Clean Energy Act is to fund projects, conservation
easements and fee land acquisitions in order to protect the
land base available for working farms or ranches, forests or
watersheds, natural areas, outdoor recreation and trails and
wildlife habitat; to fund land and habitat restoration and
management projects; and to fund clean energy development
projects.

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1 Section 3. DEFINITIONS.--As used in the Land, Wildlife
2 and Clean Energy Act:

3 A. "authority" means the New Mexico finance
4 authority;

5 B. "board" means the land, wildlife and clean
6 energy board;

7 C. "clean energy development project" means a
8 project that increases:

9 (1) energy efficiency;

10 (2) the conservation of energy; or

11 (3) the production of energy using biomass,
12 geothermal, hydrogen, solar or wind power;

13 D. "conservation project" means preservation,
14 rehabilitation, restoration or management activities directed
15 at:

16 (1) natural areas;

17 (2) working farms or ranches;

18 (3) wildlife or its habitats;

19 (4) outdoor recreation areas and trails;

20 (5) forests or watersheds; or

21 (6) other ecologically damaged lands;

22 E. "department" means the energy, minerals and
23 natural resources department;

24 F. "director" means the director of the board;

25 G. "Indian tribe" means a federally recognized

1 Indian nation, tribe or pueblo located wholly or partially in
 2 New Mexico; a governmental unit or wholly owned enterprise of
 3 such an Indian nation, tribe or pueblo; or a consortium of
 4 those Indian tribes, nations, pueblos or entities;

5 H. "public or private clean energy development
 6 agency" means a governmental body or a private not-for-profit
 7 charitable corporation or trust authorized to do business in
 8 New Mexico that has tax-exempt status under the federal
 9 Internal Revenue Code of 1986 and is authorized to conduct
 10 clean energy development projects;

11 I. "public or private conservation agency" means a
 12 governmental body or a private not-for-profit charitable
 13 corporation or trust authorized to do business in New Mexico
 14 that has tax-exempt status as a public charity under the
 15 federal Internal Revenue Code of 1986, and the power to
 16 acquire, hold or maintain land or interests in land; and

17 J. "qualified entity" means a state agency; a
 18 political subdivision of the state; an Indian tribe; a school
 19 district; a state educational institution named in Article 12,
 20 Section 11 of the constitution of New Mexico; or a public or
 21 private conservation or clean energy development agency.

22 Section 4. LAND, WILDLIFE AND CLEAN ENERGY BOARD
 23 CREATED--APPOINTMENTS--TERMS.--

24 A. The "land, wildlife and clean energy board" is
 25 created and is administratively attached to the department.

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1 B. The board consists of fourteen members as
2 follows:

3 (1) the secretary of energy, minerals and
4 natural resources or the secretary's designee;

5 (2) the director of the New Mexico department
6 of agriculture or the director's designee;

7 (3) the director of the department of game and
8 fish or the director's designee;

9 (4) the state engineer or the state engineer's
10 designee; and

11 (5) ten public members from diverse geographic
12 areas of the state appointed by the governor with the advice
13 and consent of the senate, with one representative from each of
14 the following occupations, interests or activities:

15 (a) wind, solar or biomass energy;

16 (b) energy conservation and efficiency;

17 (c) farm production; provided that the
18 representative's primary occupation is farm production;

19 (d) municipalities and counties;

20 (e) land or natural area protection
21 trust;

22 (f) wildlife management and
23 conservation;

24 (g) tribal land conservation;

25 (h) community land grants and acequias;

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1 (i) livestock or dairy production;
 2 provided that the representative's primary occupation is
 3 raising livestock or in dairy production; and

4 (j) hunting or fishing.

5 C. Appointed members of the board shall serve
 6 staggered terms of four years; provided that at the time of
 7 making the first appointments, the governor shall designate
 8 one-half of the appointed board members' first terms as being
 9 two years and one-half of the members' first terms as being for
 10 four years so that the terms of no more than five appointed
 11 members will expire at the same time. The governor shall
 12 appoint the chair of the board. A vacancy on the board shall
 13 be filled for the remainder of the term of that appointee.
 14 Appointed members of the board shall receive reimbursement for
 15 expenses incurred in the performance of their duties pursuant
 16 to the Per Diem and Mileage Act and shall receive no other
 17 compensation, perquisite or allowance.

18 Section 5. LAND, WILDLIFE AND CLEAN ENERGY BOARD--
 19 POWERS--DUTIES.--

20 A. The board shall employ a director, who shall
 21 hire personnel, not to exceed five full-time employees or the
 22 equivalent, and contract for services necessary to carry out
 23 the purposes of the Land, Wildlife and Clean Energy Act. The
 24 director shall develop and implement plans and a budget as
 25 directed by the board.

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1 B. The department shall be reimbursed for costs
2 incurred for any administrative support provided to the board
3 and the director. The board shall have an independent audit of
4 the board's finances conducted annually.

5 C. The board shall promulgate rules:

6 (1) for the management of board-funded
7 projects;

8 (2) to govern the application and selection
9 process for projects;

10 (3) to ensure appropriate public notice of
11 proposed actions;

12 (4) to provide certification requirements of
13 projects to be funded; and

14 (5) to otherwise guide the work of the board
15 and carry out the provisions of the Land, Wildlife and Clean
16 Energy Act.

17 D. The board shall evaluate each proposed project
18 using the following criteria:

19 (1) the project's potential for conserving
20 land or wildlife or increasing clean energy development;

21 (2) whether the project leverages or matches
22 other public or private investment in, or in-kind support of,
23 conservation and clean energy development projects, including
24 allowing local governments to match funding by adopting open
25 space and agriculture protection policies;

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1 (3) the impacts of the project, including
 2 benefits or avoidance of waste;

3 (4) the expertise of the qualified entity
 4 proposing the project in conducting conservation or clean
 5 energy development projects;

6 (5) the project's potential to increase
 7 collaboration among the state and its political subdivisions,
 8 other public and private conservation and clean energy entities
 9 and landowners and other interested individuals or entities;

10 (6) an appropriate balance of funding of
 11 conservation projects and clean energy development projects
 12 over the time that reflects the board's strategic plan;

13 (7) for conservation projects:

14 (a) the project's support of private
 15 ownership of working farms and ranches;

16 (b) the project's assistance to private
 17 landowners in land and wildlife conservation;

18 (c) the project's potential for
 19 conserving land and water in association with ecosystem or
 20 natural area protection or habitat enhancement; or

21 (d) the project's potential to improve
 22 public access to land, water, wildlife and natural areas and
 23 outdoor recreation opportunities, including hunting and
 24 fishing; and

25 (8) for clean energy development projects:

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1 (a) how the project will increase energy
2 efficiency or conservation; or

3 (b) how the project will increase energy
4 production using solar, biomass, geothermal, hydrogen or wind
5 power.

6 E. Projects involving acquisition of land or water
7 rights shall respect private property rights with a preference
8 for leaving land and water rights in private ownership through
9 purchase of negotiated conservation easements or voluntary
10 access agreements to ensure public benefit.

11 F. No provision of the Land, Wildlife and Clean
12 Energy Act shall be construed to alter state law regarding
13 access to the commercial development of, extraction from or
14 status of a mineral estate.

15 G. The board may:

16 (1) administer the land, wildlife and clean
17 energy fund and make grants and loans from the fund for
18 projects authorized by the Land, Wildlife and Clean Energy Act;

19 (2) acquire and manage, or assign management
20 of, whole or partial interests in land or water rights,
21 including easements;

22 (3) make grants or loans to or otherwise
23 contract with qualified entities for approved conservation
24 projects and clean energy development projects;

25 (4) fund wildlife management projects;

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1 (5) apply for, accept and expend funds from
2 private and public sources; and

3 (6) enter into contracts or agreements with
4 qualified entities as necessary to achieve the purposes of the
5 Land, Wildlife and Clean Energy Act.

6 H. The board shall meet at least quarterly, review
7 proposed conservation projects and clean energy development
8 projects and, in consultation with the director, select those
9 projects to be financed with money from the land, wildlife and
10 clean energy fund.

11 I. By October 1 of each year, the board shall issue
12 an annual report to the legislature and the governor that
13 includes:

14 (1) a list and description of each project
15 funded that year and the status of any other ongoing projects;

16 (2) a summary of the board's revenues and
17 expenses, including a combined balance sheet and statement of
18 revenue, expenditures and changes in fund balances;

19 (3) the independent auditor's report or
20 letter;

21 (4) a summary of the board's five-year
22 strategy for carrying out the purposes of the Land, Wildlife
23 and Clean Energy Act;

24 (5) information on how qualified entities may
25 apply for funding of eligible projects; and

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1 (6) an evaluation of the social, economic and
2 ecological effects of its program.

3 Section 6. CONSERVATION AND CLEAN ENERGY DEVELOPMENT
4 PROJECTS--LIMITATIONS ON ACQUISITION OF LAND AND WATER
5 RIGHTS.--

6 A. Land or water rights shall not be acquired for
7 conservation or clean energy development projects through
8 condemnation or the exercise of the power of eminent domain.
9 Land or water rights shall not be acquired for any purpose
10 other than that authorized by the Land, Wildlife and Clean
11 Energy Act. Land, water rights, conservation easements and
12 access agreements may be acquired pursuant to the Land,
13 Wildlife and Clean Energy Act only if the owner voluntarily
14 enters into an agreement to sell the land, water rights or
15 conservation easement or enter into an access agreement.

16 B. Money in the land, wildlife and clean energy
17 fund shall not be used to acquire water rights that:

18 (1) are served by or owned by an acequia or
19 community ditch established pursuant to Chapter 73, Article 2
20 or 3 NMSA 1978 unless the water rights are acquired by an
21 acequia or community ditch;

22 (2) are served by an irrigation district
23 established pursuant to Chapter 73, Article 10 NMSA 1978 or a
24 conservancy district established pursuant to Chapter 73,
25 Article 14 NMSA 1978, except through contractual arrangement

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1 with the district board of directors or as a special water
 2 users association established pursuant to Chapter 73, Article
 3 10 NMSA 1978;

4 (3) will result in an increase in net
 5 depletions in the affected river or basin that will create
 6 cumulative adverse impacts on existing water users, delivery
 7 systems or compact obligations;

8 (4) cost more than the appraised market value
 9 to purchase or lease based upon the best available information
 10 and considering the seniority and the consistent, historic
 11 beneficial use of the water rights;

12 (5) do not have sufficient seniority and
 13 consistent, historic beneficial use to effectively contribute
 14 to the purposes of the Land, Wildlife and Clean Energy Act;

15 (6) have not been adjudicated or licensed by
 16 the state engineer or do not comply with all state engineer
 17 rules governing surface and ground water transfer applications
 18 or that clearly conflict with the state water plan;

19 (7) will be used to authorize the exportation
 20 of water from one surface drainage basin or declared
 21 underground water basin to another; or

22 (8) will, upon cessation of use, increase
 23 depletions to a river or an underground water basin.

24 C. Water rights purchased with money from the land,
 25 wildlife and clean energy fund shall not be sold to the United

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1 States.

2 D. A conservation project that includes the
3 purchase of land or an interest in land with a public or
4 private conservation agency shall, to the extent required by
5 law, require that title to the land or interest in land be held
6 by the state or a political subdivision of the state, or by the
7 private conservation agency and the state, or political
8 subdivision of the state, as cotenants with an undivided
9 interest in the land or interest in the land. If the private
10 conservation agency fails to perform its management, monitoring
11 or enforcement duties as they relate to a conservation project,
12 the ownership interest of any land or interest in land
13 purchased with state funds for that project shall revert to the
14 participating governmental entity until the interest is
15 transferred to another private conservation agency chosen by
16 the owner of the underlying estate, in the case of a
17 conservation easement, or by the participating government
18 entity if the land is owned in fee.

19 E. All projects, including the purchase of land,
20 shall guarantee that the project or land shall be maintained so
21 as to protect the public health and welfare.

22 F. Conservation projects that reduce the taxable
23 land base of a political subdivision that is not a partner in
24 the proposed project shall provide compensation for the
25 estimated revenue loss based on the land's use at the time of

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1 purchase to the affected political subdivision from money in
 2 the land, wildlife and clean energy fund.

3 Section 7. LAND, WILDLIFE AND CLEAN ENERGY FUND--
 4 CREATION--USE.--

5 A. The "land, wildlife and clean energy fund" is
 6 created in the state treasury and shall consist of
 7 appropriations made to the fund; gifts, grants and donations;
 8 other revenue credited to the fund; and income from investment
 9 of the fund. Balances in the fund at the end of a fiscal year
 10 shall not revert to the general fund. The department shall
 11 administer the fund on the board's behalf.

12 B. Money in the land, wildlife and clean energy
 13 fund is appropriated to the board to make loans or grants to,
 14 or otherwise contract with, qualified entities for conservation
 15 projects and clean energy development projects as authorized by
 16 the Land, Wildlife and Clean Energy Act for projects costing
 17 less than two million dollars (\$2,000,000) and, if specifically
 18 authorized by law, for projects costing two million dollars
 19 (\$2,000,000) or more and for expenses necessary to carry out
 20 the provisions of that act. Disbursements from the fund shall
 21 be made upon warrants drawn by the secretary of finance and
 22 administration pursuant to vouchers signed by the chair of the
 23 board or the chair's authorized representative.

24 Section 8. THIRD-PARTY ENFORCEMENT LIMIT--NOTICE OF
 25 TRANSFER OF PROPERTY.--

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